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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/005,789

11/08/2001

Jerome T. Hartlaub

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27581

7590

06/29/2005

MEDTRONIC, INC.

710 MEDTRONIC PARKWAY NE

MS-LC340

MINNEAPOLIS, MN 55432-5604

EXAMINER

HAN, MARK K

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/005,789

Applicant(s)

HARTLAUB, JEROME T.

Examiner

Mark K. Han

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-23 is/are pending in the application.
- 4a) Of the above claim(s) 8-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7 and 18-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 September 2004 has been entered.

### *Election/Restrictions*

2. Claims 8-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the Office Action mailed on 29 August 2003.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4-6 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,643,207 to Rise in view of U.S. Patent No. 5,584,885 to Seckel.

Rise discloses an implantable infusion device for delivering a medicament composition to a target site through a catheter having a reservoir and medicament composition. Rise, however,

Art Unit: 3763

does not disclose that the medicament composition include living cells and a second medicament composition. Seckel teaches a medicament composition including living cells and a second medicament composition (col. 7, line 17 through col. 8, line 12). It would have been obvious to one of ordinary skill in the art to modify the invention of Rise by including the composition of Seckel to provide a therapeutic effect to more than one part of the body. In reference to claims 5 and 6, it is considered to be inherent that such cells will produce an exogenous substance.

4. Claims 7, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rise in view of Seckel, further in view of U.S. Patent No. 5,738,129 to Medenica.

Rise and Seckel disclose the claimed invention except for a reservoir containing a cell maintainer adaptive to maintain the cells in a dormant state, wherein the cell maintainer comprises a coating on the interior of the reservoir and wherein the cell maintainer comprises vitamin A derivative retinoic acid. Medenica discloses such a composition. See col. 4, line 5 through col. 6, line 18. It would have been obvious to one of ordinary skill in the art to use the cell maintainer of Medenica in the invention of Rise and Seckel since such reservoirs are notoriously well known in the art for allowing cells to maintain a dormant state.

#### ***Response to Arguments***

5. Applicant's arguments filed 21 September 2004 have been fully considered but they are not persuasive.

6. Applicant seems to argue that the use of the Seckel reference would be improper because Seckel does not teach an infusion device for delivering medicament to a target site through a catheter. The Examiner uses a different reason for combining. The Examiner relies on the

Art Unit: 3763

Seckel reference merely for the suggestion of the medicament, not for the teaching of an infusion device with a catheter. The rejection under 35 U.S.C. §103(a) is hereby maintained.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K. Han whose telephone number is 571-272-4958. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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June 27, 2005